
Exhibit C

RICHARD A. MITCHELL

1 .
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE WESTERN DISTRICT OF MISSOURI
4 WESTERN DIVISION

5 .
6 .
7 RICHARD MITCHELL,

8 Plaintiff,

9 vs.

Case No. 4:23-cv-00138-GAF

10 THE DIEZ GROUP, LLC,

11 d/b/a DIEZ GROUP, et al.,

12 Defendants.
13 .
14 .

15 DEPOSITION OF

16 RICHARD A. MITCHELL,

17 taken on behalf of the Defendants, pursuant to
18 Notice to Take Deposition, beginning at 10:00 a.m.
19 on the 9th day of November, 2023, at the law
20 offices of Seyferth, Blumenthal & Harris, LLC,
21 4801 Main Street, Suite 310, in the City of Kansas
22 City, County of Jackson, and State of Missouri,
23 before Cori R. Power, CCR, CVR, Kansas License No.
24 1739, Missouri License No. 1436.
25 .

RICHARD A. MITCHELL

APPEARANCES

ON BEHALF OF THE PLAINTIFF:

Ms. M. Katherine Paulus
Mr. Drew Russell
Cornerstone Law Firm
5821 Northwest 72nd Street
Kansas City, MO 64151
816-581-4040
m.paulus@cornerstonefirm.com
d.russell@cornerstonefirm.com

ON BEHALF OF THE DEFENDANT:

Mr. Robert J. Finkel
Finkel Whitefield Feldman
32300 Northwestern Highway, Suite 200
Farmington Hills, MI 48334
248-855-6500
rfinkel@fwf-law.com

RICHARD A. MITCHELL

1 No 2 was marked for identification.)

2 BY MR. FINKEL:

3 Q. Do you remember that, Mr. Mitchell?

4 A. Yes.

5 Q. Okay. Okay.

6 MR. FINKEL: Is Exhibit 2 entered?

7 THE REPORTER: (Nods head up and down.)

8 MR. FINKEL: Okay.

9 BY MR. FINKEL:

10 Q. All right. So you were hired to a full
11 time position of a second shift maintenance
12 supervisor; is that correct?

13 A. Yes.

14 Q. Okay. Okay. And your second shift
15 hours, would -- would it be true they were from
16 4:30 p.m. to 2:30 a.m.?

17 A. Yes.

18 Q. Okay. So you were hired to work the
19 night shift; correct?

20 A. Yes.

21 Q. Okay. Okay. And you reported to Ryan
22 Vestal, the maintenance manager; is that correct?

23 A. Yes.

24 Q. Okay. And the offer letter indicates
25 you'd be subject to a 90-day probationary period.

RICHARD A. MITCHELL

1 Is that also accurate?

2 A. Yes.

3 Q. Okay. And it also says you were an at-
4 will employee; is that correct?

5 A. Yes, it does.

6 Q. Okay. And you signed that letter and
7 agreed to its terms; right?

8 A. Yes, I did.

9 Q. Okay. Okay. And you went through
10 orientation and training?

11 A. I went through orientation -- I went
12 through -- yeah, training. Yes, I did. Watched
13 some video too.

14 Q. Okay. And you started, I think, on March
15 28, 2022; is that correct?

16 A. Yeah. March 28 I believe.

17 Q. Okay. Okay. And the plant manager
18 during your employment was a guy named Matt Hunt?

19 A. I don't remember.

20 Q. Don't remember?

21 A. Don't remember.

22 Q. You don't remember Matt Hunt?

23 A. No.

24 Q. Okay. Okay. And do you remember Sharon
25 Melville -- Melvin was in charge of human

RICHARD A. MITCHELL

1 A. Well, Ryan never talked.

2 Q. Okay. Do you recall texting any --
3 anything about the conduits to Sharon Melvin?

4 A. Don't remember that.

5 Q. Okay. Have any attendance issues when
6 your were there for that period of time you worked
7 at Diez?

8 A. They wrote me up on one that I know of.

9 Q. Okay. So you started on March 28, 2022,
10 we know that. And I think you worked the 28th
11 and the 29th, and do you recall you left after 30
12 minutes on March 30th?

13 A. No. Don't remember that.

14 Q. Don't recall?

15 A. No.

16 Q. Okay. Do you recall being absent on
17 March 31 and April 1st?

18 A. Yes.

19 Q. Okay. Do you recall that you were a no
20 show, no call on April 23rd?

21 A. Don't remember that.

22 Q. Do you recall receiving an attendance
23 reprimand on April 27th?

24 A. Yes.

25 Q. Okay.

RICHARD A. MITCHELL

1 MR. FINKEL: 5.

2 (THEREUPON, Mitchell Deposition Exhibit
3 No 5 was marked for identification.)

4 BY MR. FINKEL:

5 Q. Do you recall receiving that, Mr.
6 Mitchell?

7 A. Yes, I do.

8 Q. Okay. All right. You were still a
9 probationary employee at -- during that time;
10 correct?

11 A. Yes.

12 Q. Okay. So under the rules you could have
13 been terminated; correct?

14 A. Yes, I could have.

15 Q. But you weren't?

16 A. No, I wasn't.

17 Q. Okay. So on May 19, 2022, you called
18 Sharon Melvin and said you'd been injured on the
19 job; is that right?

20 A. Yes.

21 Q. Okay. And what kind of injury did you
22 describe to her?

23 A. I described nothing to her. I just told
24 her that I needed to go see the doctor, and she
25 told me to come in, and she gave me one of those

RICHARD A. MITCHELL

1 slips to go see the -- our company doctor.

2 Q. So you didn't tell her how you were
3 injured or what you were injured?

4 A. No. Never spoke to her. She just told
5 me to come in.

6 Q. Do you recall her asking you when the
7 injury happened?

8 A. Yes. She asked me when I came into her
9 office to get the slip to go to the doctor's
10 office -- I mean, go see the company's thing, and
11 I told her it happened last night. That was it.

12 Q. Okay. You recall ever telling her that
13 when she asked you that, you said "Recently"?

14 A. We never spoke on that.

15 Q. Okay. Do you recall telling her at any
16 time that it happened two, three weeks ago?

17 A. No.

18 Q. Okay. So your claim that the injury took
19 place on May 18th?

20 A. Yes.

21 Q. Okay. Do you recall Sharon asking you
22 where the injury occurred?

23 A. Me and Sharon never spoke about that.

24 Q. Okay. Do you recall her asking you what
25 time the injury occurred?

RICHARD A. MITCHELL

1 Q. Are you talking about the coils?

2 A. Yeah. The coils. Yeah, you have to,
3 like, get the -- the little inside pieces out.
4 And sometimes they are kind of stuck in there, and
5 then you have to kind of jerk and pull, you know,
6 to get them out. And I guess in one particular
7 time I -- I pulled too hard, and it kind of
8 messed my back up.

9 Q. Okay. But you -- you first said to her
10 you were operating the crane like you said;
11 correct?

12 A. Yes. Operating the crane.

13 Q. But you weren't operating the crane, you
14 were unwrapping the coils; correct?

15 A. No. The crane brings the coils to you.

16 Q. Right.

17 A. Yes.

18 Q. Yeah, but you didn't get injured on the
19 crane?

20 A. No. I got injured pulling -- cutting
21 coils off and pulling, pulling it out.

22 Q. Okay. All right. And -- and you pulled
23 it where -- what -- what happened?

24 A. When I was pulling the coil? When I was
25 pulling the plastic off? The plastic sometimes be

RICHARD A. MITCHELL

1 stuck, and you have to, like, pull real hard to
2 get it out, because it -- they so stuck in between
3 the coils, sometimes you have to, like, really
4 jerk and pull.

5 And so in this particular one it was stuck up
6 in there, and I had to, like, really reach in
7 there and had to, like, pull. And then when I
8 was pulling back to pull back to get it out, it
9 kind of like -- I felt a little tug on my
10 shoulder, like oh, you know, like a little twitch
11 in my shoulder. But I still finished the night
12 out.

13 Q. Okay. And you -- you didn't say anything
14 to your supervisor that night about the injury,
15 did you?

16 A. I didn't have a supervisor.

17 Q. Didn't have a supervisor?

18 A. No.

19 Q. There's no supervisor at the night shift?

20 A. Not mine. It was just a plant -- a
21 pedestrian supervisor.

22 Q. Okay. And sure you didn't report any
23 injury that night; correct?

24 A. No.

25 Q. Is that -- that correct or you didn't --

RICHARD A. MITCHELL

1 A. No. I didn't -- I didn't report the
2 injury until that morning.

3 Q. Okay. The next morning?

4 A. Yes. The next morning.

5 Q. Okay. And who did you report it to?

6 A. Sharon.

7 Q. Okay. And again I'm asking you what did
8 you tell her?

9 A. I just called and told her that I was
10 hurt, you know, my shoulder was hurting, and just
11 in that conversation she say "You need to come and
12 take this form and go see the company doctor."

13 Q. So you did mention your shoulder?

14 A. Yes.

15 Q. Okay. Before you just said you were
16 injured, and I asked you more specifically. So
17 you told her you injured your shoulder; is that
18 correct?

19 A. Yeah. I told her and showed her the day
20 that I went to see her about getting that form.

21 Q. And did you tell her that in person or
22 over the phone?

23 A. It was over the phone.

24 Q. Okay. At the clinic, or --

25 A. No. It was over the phone. I talked to

RICHARD A. MITCHELL

1 her on the phone.

2 Q. Oh, and that's when she told you to go to
3 the clinic?

4 A. Yeah. She told me to come down there and
5 get the form and go to the clinic.

6 Q. Do you recall about what time it was?

7 A. I can't remember.

8 Q. Morning?

9 A. It was morning.

10 Q. Okay. And do you know if your handbook
11 has any rules about -- or the company has any
12 rules about reporting an injury immediately?

13 A. It might have in there.

14 Q. It might. Okay. And a handbook, page 22
15 where it says "Reporting Safety Issues"?

16 A. Yes.

17 Q. Okay. And I think on the third line it
18 says "You must contact your supervisor
19 immediately, no later than the end of the shift"?

20 A. Yes. I see that.

21 Q. Okay. But -- but your testimony is you
22 didn't have a supervisor?

23 A. No. Didn't have a supervisor.

24 Q. Okay. But you didn't report that to
25 anybody?

RICHARD A. MITCHELL

1 A. Not that night. Yeah.

2 Q. Yeah.

3 A. I waited until the next day when somebody
4 was in the office.

5 Q. Okay. Now you reported this injury the
6 next morning to Sharon?

7 A. Yes.

8 Q. Okay. And how do you know you injured it
9 on this -- the coils?

10 A. Because I was working on them -- on the
11 coils that night.

12 Q. Okay. And -- and you felt something.
13 You said you felt a twitch or something?

14 A. Yeah. I felt, like, a little pull.

15 Q. A little -- little pull? Okay. But you
16 didn't think to report that little pull to anybody
17 at the company that -- that evening?

18 A. No.

19 MS. PAULUS: Objection. Sorry. It's too
20 late now.

21 BY MR. FINKEL:

22 Q. Okay. So when you -- you reported it to
23 -- the injury to Sharon, she told you to go to
24 the clinic; correct?

25 A. Yes.

RICHARD A. MITCHELL

1 A. Right.

2 Q. Okay. Are -- and you couldn't reach
3 above your shoulder or use your right shoulder?

4 A. Right.

5 Q. Okay. And while you had these temporary
6 restrictions, you couldn't perform the maintenance
7 tech position, could you?

8 A. No. No.

9 Q. Okay. And did you get a -- the
10 maintenance tech position is --

11 MR. FINKEL: 7.

12 (THEREUPON, Mitchell Deposition Exhibit
13 No 7 was marked for identification.)

14 BY MR. FINKEL:

15 Q. Okay. Are you familiar with that job
16 description for the maintenance tech?

17 A. Yes, I do.

18 Q. Okay. All right. Did Sharon Melvin tell
19 you that there wasn't any light duty available for
20 you to work because you -- because of your
21 restrictions?

22 A. No. She told me that I -- I couldn't
23 come back to work until I was 100 percent.

24 Q. Okay. But clearly you couldn't perform
25 the maintenance tech job through that period of

RICHARD A. MITCHELL

1 time; correct?

2 A. What do you mean?

3 Q. Well, with those -- the restrictions you
4 had.

5 A. Right, I could not.

6 Q. Yeah. Okay. But she -- she told you she
7 didn't have any light-duty work, but, you know,
8 you could follow -- just follow up with your
9 treatments?

10 A. Yes.

11 Q. Okay. And did you have some physical
12 therapy treatments?

13 A. Yes. I was going to physical therapy.

14 Q. Okay. And you were ultimately released
15 to work a few weeks later; right?

16 A. A few weeks later?

17 Q. A few weeks later.

18 A. Yes. A few weeks later. Yes.

19 Q. Yeah, yeah. I think -- I think it was on
20 January 9th?

21 A. No. No January anything.

22 Q. I'm sorry, June 9th. Excuse me.

23 A. It might have been June 9th.

24 Q. Yeah. Okay.

25 (THEREUPON, Mitchell Deposition Exhibit

RICHARD A. MITCHELL

1 paragraph 25 you say that -- or you're claiming
2 that Sharon said you could not return to work
3 until you were 100 percent released to full duty,
4 because there was no light duty for you?

5 A. Yes.

6 Q. Okay. And did she also tell you that,
7 you know, you had to be able to perform the job
8 with or without accommodation?

9 A. With or without accommodation?

10 Q. With or without accommodation.

11 A. No.

12 Q. No? Okay. So you were released to work
13 on June 9, 2022, so you could have performed your
14 job at that time; is that correct?

15 A. That was when I come back to full duty,
16 yes.

17 Q. Okay. And in paragraph 28 it says doctor
18 told you you needed to begin physical therapy for
19 your injuries and keep your light duty
20 restrictions in place. See that?

21 A. Yes.

22 Q. Okay. Okay. What type of therapy were
23 you doing?

24 A. They just were working on my motions,
25 like my -- my pulling, my lifting, my

RICHARD A. MITCHELL

1 strengthening, just to see how much I can lift,
2 how much I can pull, how much I could push, you
3 know, determine how far out I am from being --
4 going back to work full duty.

5 Q. Okay. And how often did you go to
6 physical therapy?

7 A. I don't remember.

8 Q. Okay. And did you continue that therapy
9 after June 9th?

10 A. No.

11 Q. No? Okay. So in Count 1 of your
12 complaint on page 5, you're basically saying that
13 The Diez Group retaliated against you for filing a
14 workers' comp claim; correct?

15 A. Yes.

16 Q. Okay. And when did you file your
17 workers' comp claim?

18 A. I think that within a day or two, day or
19 two, I would have been notified I was terminated.

20 Q. Okay. So a day or two after May 24?

21 A. I believe so.

22 Q. Okay.

23 A. I don't really remember, but I'm
24 assuming.

25 Q. Somewhere around that time you believe?

RICHARD A. MITCHELL

1 A. Yes.

2 Q. Okay.

3 MS. PAULUS: Can we take a break soon?
4 We've been going about an hour.

5 MR. FINKEL: We can take a break anytime
6 you want.

7 MS. PAULUS: All right. I just didn't
8 want you to get into another question first.

9 (THEREUPON, a break was taken.)

10 BY MR. FINKEL:

11 Q. I believe the last question I asked you
12 was when you filed your workers' comp claim, and
13 you said one or two days after May 24?

14 A. Yes.

15 Q. Okay. And nobody from The Diez Group
16 ever discouraged you from filing that claim, did
17 they?

18 A. No.

19 Q. Okay. And no one ever made a negative
20 comment to you about filing that claim, did they?

21 A. No.

22 Q. Okay. And you have the handbook in front
23 of you. Directing you to page 28.

24 A. Workmen's comp?

25 Q. Yeah, workers' comp, in that first

RICHARD A. MITCHELL

1 Q. Okay. All right. And when you did
2 notify Sharon Melvin on, what was it, the 20 -- or
3 on -- on May 19th, she immediately sent you to the
4 clinic?

5 A. Yes.

6 Q. Okay. And you did receive your Workers'
7 Compensation benefits; true?

8 A. Yes.

9 Q. Okay. And the company never challenged
10 your right to receive those benefits, did it?

11 A. No.

12 Q. Okay. And the company provided it --
13 well, I don't know if you know if the company
14 provided all the necessary information to the
15 workers' comp insured so you could get your
16 benefits?

17 MS. PAULUS: Objection. Calls for
18 speculation.

19 You can answer.

20 A. I -- I don't know.

21 BY MR. FINKEL:

22 Q. Okay. What -- what evidence or facts do
23 you have to support your claim that the company
24 retaliated against you because you filed a
25 workers' comp claim?

RICHARD A. MITCHELL

1 duties.

2 Q. Okay. But you -- you can work; correct?

3 A. Yeah, I can work, but not at a hundred
4 percent.

5 Q. Okay. All right. On paragraph 50 of
6 your complaint it says you can perform the
7 essential functions of your job with or without
8 accommodation. Is that true?

9 A. No.

10 Q. It's not true?

11 A. You mean to this right here?

12 Q. Yeah.

13 A. To -- to what I -- hold on. Let me see.
14 That would be true.

15 Q. Okay. So you -- you can perform your
16 essential functions?

17 A. Yes.

18 Q. Okay. And during the period from May 19,
19 2022, through June 9, 2022, when you weren't
20 released to work, how could you perform the -- the
21 maintenance tech job with an accommodation?

22 MS. PAULUS: I'm going to object that
23 it's argumentative. Calls for a legal conclusion.
24 You can answer.

25 A. No. Back to -- back in -- back to June

RICHARD A. MITCHELL

1 perform the job. I couldn't perform the job.

2 Q. Okay. With or without accommodation?

3 MS. PAULUS: I'll object that it calls
4 for a legal conclusion.

5 You can answer.

6 A. With accommodations, yes. I couldn't
7 perform the job without accommodations.

8 BY MR. FINKEL:

9 Q. Okay. What accommodations would you need
10 to perform your job?

11 A. Light duty.

12 Q. But there wasn't any light duty available
13 you were told; correct?

14 A. Right. There's no light duty.

15 Q. Okay.

16 A. No light duty.

17 Q. Okay. So you couldn't do your
18 maintenance tech job; correct?

19 MS. PAULUS: Objection. Asked and
20 answered. You can answer.

21 A. Correct. I couldn't perform it.

22 BY MR. FINKEL:

23 Q. Okay. Yeah. I mean, the maintenance
24 tech job you needed to weigh -- lift more than 10
25 pounds; correct?

RICHARD A. MITCHELL

1 A. Yes.

2 Q. Okay. And you've got to raise your
3 shoulder up to do your work. And you never
4 requested any accommodation, did you, during that
5 period of time?

6 MS. PAULUS: Objection. Calls for a
7 legal conclusion.

8 You can answer.

9 A. No. I never requested anything.

10 BY MR. FINKEL:

11 Q. Okay. So in -- in your complaint, you
12 know, you claim that the company failed to
13 accommodate you; is that right?

14 A. I was --

15 MS. PAULUS: Objection. Calls for a
16 legal conclusion.

17 You can answer.

18 A. The failure to accommodate me. Well, you
19 mean, like, give me light-duty work, or just come
20 back to work?

21 BY MR. FINKEL:

22 Q. Well, I don't -- I'm asking you, because
23 that's what your complaint says that, you know, we
24 -- the company didn't accommodate you, and my
25 question is, you know, number one, you didn't

RICHARD A. MITCHELL

1 this is an assumption -- can't continue to see you
2 unless doctor -- unless the company say "Okay, we
3 need to send you further into therapy." So based
4 off my work, my physical condition, no.

5 Q. Okay. And -- and who told you this, the
6 nurse at the clinic?

7 A. Yeah, the nurse at the clinic.

8 Q. Okay.

9 A. Me and her was talking.

10 Q. Okay.

11 A. I thought -- I thought she had written it
12 all down.

13 Q. Okay. And we've gone over all the
14 conversations you had with Sharon during this
15 time; correct?

16 A. Yes.

17 Q. And -- okay. Did Sharon ever make any
18 negative comments about you being disabled?

19 A. No.

20 Q. Okay. And she just told you to continue
21 your treatments; correct?

22 A. Yes.

23 Q. Okay. And you were on approved leave of
24 absence during that time; correct?

25 A. Yes.

RICHARD A. MITCHELL

1 Q. Okay. Are you aware of any Diez Group or
2 Delaco Group employee who failed to immediately
3 report an accident or an injury and was not
4 terminated?

5 A. No.

6 Q. Okay. Are you aware of any Diez Group
7 employee who was counseled regarding poor
8 performance, had more than two attendance points,
9 and violated company rules that was not
10 discharged?

11 MS. PAULUS: Objection. Compound.

12 You can answer.

13 A. None that I know of.

14 BY MR. FINKEL:

15 Q. Okay. Now, I think in your complaint you
16 claimed you have suffered emotional distress as a
17 result of the company's actions; correct?

18 A. Yes.

19 Q. Okay. And can you explain to me your --
20 your distress?

21 A. Yeah, I mean --

22 Q. And your anguish and your humiliation?

23 A. I mean, it's like -- I'm there thinking,
24 you know, I was going to come back to the job,
25 you know, after I had completed my -- my therapy

RICHARD A. MITCHELL

1 BY MR. FINKEL:

2 Q. It's true during work you -- you text
3 Ryan back and forth?

4 A. Back and forth? I don't recall.

5 Q. You don't recall ever texting Ryan?

6 A. I don't remember. I -- I do not.

7 Q. What about texting Sharon?

8 A. Yeah.

9 Q. You text Sharon all the time; right?

10 A. Yeah.

11 Q. Okay. And how -- how do you know, like,
12 when you got off work on the 18th and -- and you
13 woke up on the 19th and you felt the pain;
14 correct?

15 A. Yes.

16 Q. Is it possible that you slept wrong?

17 A. No, I didn't sleep wrong.

18 Q. How -- how do you know that?

19 A. I know how I sleep.

20 Q. Oh, okay. All right. In Exhibit 6 that
21 you're looking at, right under it says, "Return to
22 modified work duty." It says below that what your
23 restrictions were?

24 A. Yes.

25 Q. "May lift up to 10 pounds, push and pull